

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

SHAWN ALLEN HAMILTON, ET AL.,

Plaintiffs,

VS.

**A & L INDUSTRIAL SERVICES, INC.,
ET AL.,**

Defendants.

§
§
§
§
§
§
§
§
§
§

NO. 1:12-CV-00388

**EXHIBIT A
TO DEFENDANT S & B ENGINEERS AND CONSTRUCTORS, LTD.'S
MOTION TO SEVER**

Dated: December 11, 2012.

Respectfully submitted,

/s/ Linda Ottinger Headley

Linda Ottinger Headley (Lead Attorney)

State Bar No. 15344600

lheadley@littler.com

Danielle K. Herring

State Bar No. 24041281

dherring@littler.com

Elizabeth L. Bolt

State Bar No. 24059470

ebolt@littler.com

LITTLER MENDELSON, P.C.

A PROFESSIONAL CORPORATION

1301 McKinney Street, Suite 1900

Houston, TX 77010

713.951.9400 (Telephone)

713.951.9212 (Facsimile)

ATTORNEYS FOR DEFENDANT

S & B ENGINEERS AND CONSTRUCTORS, LTD.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to counsel of record by electronic notification on this 11th day of December 2012, addressed as follows:

John Werner
REAUD, MORGAN & QUINN, LLP
P.O. Box 26005
Beaumont, Texas 77720-6005

ATTORNEYS FOR PLAINTIFFS

William Jackson Wisdom
Ethan Dennis Carlyle
MARTIN DISIERE JEFFERSON & WISDOM
808 Travis, 20th Floor
Houston, Texas 77002

ATTORNEYS FOR DEFENDANT A & L INDUSTRIAL SERVICES, INC.

Charles Larry Carbo, III
William Otis Grimsinger
CHAMBERLAIN HRDLICKA WHITE WILLIAMS & AUGHTRY
1200 Smith Street, Suite 1400
Houston, Texas 77002

ATTORNEYS FOR DEFENDANT AXION LOGISTICS, LLC

Andrew S. Hament
FORD & HARRISON LLP
1901 S. Harbor City Blvd., Suite 501
Melbourne, Florida 32901

Chelsie J. Flynn
300 S. Orange Avenue, Suite 1300
Orlando, Florida 32801

Daniel N. Ramirez
MONTY & RAMIREZ, LLP
150 West Parker Road, Third Floor
Houston, Texas 77076

ATTORNEYS FOR DEFENDANT BAKER CONCRETE CONSTRUCTION, INC.

Fritz Barham Lewis, Jr.
OGLETREE DEAKINS NASH SMOAK & STEWART
500 Dallas Street, Suite 3000
Houston, Texas 77002-4709

**ATTORNEYS FOR DEFENDANT BRAND ENERGY AND INFRASTRUCTURE SERVICES, INC., PCL
INDUSTRIAL CONSTRUCTION COMPANY, AND PORT ARTHUR LOGISTICS, LLC**

G. Mark Jodon
Sarah B. Morton
LITTLER MENDELSON, P.C.
1301 McKinney Street, Suite 1900
Houston, Texas 77010

ATTORNEYS FOR DEFENDANT BROCK SERVICES LLC

James M. Cleary, Jr.
Ethan Dennis Carlyle
Jeffrey M. McPhaul
MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.
808 Travis, 20th Floor
Houston, Texas 77002

ATTORNEYS FOR DEFENDANT CAR-BER TESTING TEXAS, LLC

Walter Umphrey
Darren L. Brown
Mark Sparks
PROVOST UMPHREY LAW FIRM, LLP
P. O. Box 4905
Beaumont, Texas 77704-4905

ATTORNEYS FOR DEFENDANT ECONOMY INSULATION CO., INC.

Patricia J. Hill
Yash B. Dave
SMITH, GAMBRELL, AND RUSSELL LLP
50 N. Laura Street, Suite 2600
Jacksonville, Florida 32202

ATTORNEYS FOR DEFENDANT EMPIRE SCAFFOLD, LLC

Stephen Craig Wilcox
ADAMS & REESE
1221 McKinney, Suite 4400
One Houston Center
Houston, Texas 77010

Lauren Lopresto Tafaro
Leslie A. Lanusse
ADAMS & REESE
701 Poydras Street, Suite 4500
New Orleans, Louisiana 70139

ATTORNEYS FOR DEFENDANT INSULATIONS, INC.

Curtis D. Herms, Jr.
Ryan S. Thorson
VAHRENWALD, JOHNSON & MCMAHILL, LLC
125 S. Howes, Suite 1100
Fort Collins, Colorado 80521

ATTORNEYS FOR DEFENDANT INTEGRATED ELECTRICAL SERVICES, INC.

Wyatt D. Snider
Russell W. Heald
Justin G. Sanderson
SNIDER LAW FIRM, PLC
Delaware Office Plaza
3560 Delaware Street, Suite 308
Beaumont, Texas 77706

ATTORNEYS FOR DEFENDANT KT MAINTENANCE COMPANY, INC.

James E. Wimberley
MCPHERSON, HUGHES, BRADLEY, WIMBERLEY, STEELE & CHATELAIN
3120 Central Mall Drive
Port Arthur, Texas 77642

ATTORNEYS FOR DEFENDANT ORBITAL INSULATION CORP.

Murphy J. Foster, III
Melissa Morse Shirley
BREAZEALE, SACHSE & WILSON LLP
One American Place, 23rd Floor
Post Office Box 3197
Baton Rouge, Louisiana 70821-3197

Rachel M Hoffer
Timothy Mitchell Watson
SEYFARTH SHAW, LLP
700 Louisiana Street, Suite 3700
Houston, TX 77002

ATTORNEYS FOR DEFENDANT PERFORMANCE CONTRACTORS, INC.

Bertrand C. Moser
2415 Robinhood
Houston, Texas 77005

ATTORNEYS FOR DEFENDANT TECON SERVICES, INC.

Grant D. Petersen
Kathleen A. Liever
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
100 N. Tampa St., Suite 3600
Tampa, Florida 33602

ATTORNEYS FOR DEFENDANT TRACER INDUSTRIES MANAGEMENT CO., INC.

Don Lighty
STEVENS BALDO FREEMAN & LIGHTY, L.L.P.
550 Fannin Street, Suite 700
Beaumont, Texas 77701

ATTORNEY FOR DEFENDANT TURNER INDUSTRIES GROUP, L.L.C.

/s/ Elizabeth L. Bolt
Elizabeth L. Bolt

EXHIBIT A

Case Management Conference

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JERRETT RAY ARMSTRONG,
ET AL

DOCKET 1:12CV228

VS.

AUGUST 23, 2012

11:30 A.M.

A&L INDUSTRIAL SERVICES,
INC., ET AL

BEAUMONT, TEXAS

VOLUME 1 OF 1, PAGES 1 THROUGH 48

REPORTER'S TRANSCRIPT OF CASE MANAGEMENT CONFERENCE

BEFORE THE HONORABLE RON CLARK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: JOHN GERARD WERNER
REAUD, MORGAN & QUINN
801 LAUREL STREET
BEAUMONT, TEXAS 77701

FOR THE DEFENDANTS A&L INDUSTRIAL SERVICES, INC. AND
CAR-BER TESTING TEXAS, LLC:

JAMES MICHAEL CLEARY, JR.
MARTIN DISIERE JEFFERSON & WISDOM
808 TRAVIS
SUITE 1800
HOUSTON, TEXAS 77002

FOR THE DEFENDANT EMPIRE SCAFFOLD, LLC:

PATRICIA JEANNE HILL
SMITH GAMBRELL & RUSSELL
50 NORTH LAURA STREET
SUITE 2600
JACKSONVILLE, FLORIDA 32202

Case Management Conference

2

1
2 FOR THE DEFENDANT KPMC TURNAROUND GROUP:

3 RUSSELL W. HEALD
4 SNIDER LAW FIRM
5 3560 DELAWARE STREET
6 SUITE 308
7 BEAUMONT, TEXAS 77706

8
9 FOR THE DEFENDANT GP INDUSTRIAL CONTRACTORS:

10 CARL A. PARKER
11 THE PARKER LAW FIRM
12 106 EAST SIXTH STREET
13 SUITE 900
14 AUSTIN, TEXAS 78701

15
16 FOR THE DEFENDANT PERFORMANCE CONTRACTORS, INC.:

17 MURPHY J. FOSTER, III
18 BREAZEAL SACHSE & WILSON
19 23RD FLOOR, ONE AMERICAN PLACE
20 POST OFFICE BOX 3197
21 BATON ROUGE, LOUISIANA 70821

22
23 FOR THE DEFENDANT RMF NOOTER, INC.:

24 VINCENT D. REESE
25 LEWIS RICE & FINGERSH
600 WASHINGTON AVENUE
SUITE 2500
ST. LOUIS, MISSOURI 63101

STEPHEN W. SCHUELER
WINSTEAD PC
1100 JPMORGAN CHASE TOWER
600 TRAVIS STREET
HOUSTON, TEXAS 77002

Case Management Conference

3

1 FOR THE DEFENDANT S&B ENGINEERS AND CONSTRUCTORS, LTD.:

2 LINDA O. HEADLEY
3 DANIELLE K. HERRING
4 LITTLER MENDELSON - HOUSTON
5 1301 MCKINNEY STREET
6 SUITE 1900
7 HOUSTON, TEXAS 77010

8 FOR THE DEFENDANT TOTAL INDUSTRIAL PLANT SERVICES, INC.:

9 DANIEL EDWARD MABRY
10 STRONG PIPKIN BISSELL & LEDYARD
11 595 ORLEANS
12 1400 SAN JACINTO BUILDING
13 BEAUMONT, TEXAS 77701

14 FOR THE DEFENDANT TRACER INDUSTRIES MANAGEMENT CO., INC.:

15 GRANT D. PETERSEN
16 OGLETREE DEAKINS NASH
17 SMOAK & STEWART
18 100 N. TAMPA STREET
19 SUITE 3600
20 TAMPA, FLORIDA 33602

21 FOR THE DEFENDANT TURNER INDUSTRIES GROUP, LLC:

22 DONALD FRANCIS LIGHTY
23 STEVENS BALDO FREEMAN & LIGHTY
24 550 FANNIN
25 SUITE 700
BEAUMONT, TEXAS 77701

26 COURT REPORTER: CHRISTINA L. BICKHAM, CRR, RMR
27 FEDERAL OFFICIAL REPORTER
28 300 WILLOW, SUITE 221
29 BEAUMONT, TEXAS 77701

30 PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE;
31 TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.

Case Management Conference

4

1 (REPORTER'S NOTES 8-23-2012\ARMSTRONG CMC,
2 11:30 A.M., THURSDAY, AUGUST 23, 2012, BEAUMONT, TEXAS,
3 HON. RON CLARK PRESIDING.)

4 (OPEN COURT, JURY PRESENT.)

5 THE COURT: All right. I'll call *Jerrett Ray*
6 *Armstrong, et al* versus A&L Industrial Services, Inc.,
7 *et al*, Number 1:12cv228.

8 Who is here for plaintiff?

9 MR. WERNER: John Werner is here, your Honor.

10 THE COURT: Okay. And then for defendants, I
11 think the easier thing for me to do is to state the name;
12 and if you'll just tell me who you're representing.

13 Mr. James Cleary?

14 MR. CLEARY: Your Honor, I represent A&L
15 Industrial Services and Car-Ber Testing.

16 THE COURT: Okay. And then Mr. Reese?

17 MR. REESE: Your Honor, I represent RMF Nooter
18 Corporation.

19 THE COURT: I'm sorry?

20 MR. REESE: RMF Nooter.

21 THE COURT: Oh, RMF. Okay.

22 And then Mr. Schueler?

23 MR. SCHUELER: I also represent RMF Nooter
24 Corporation.

25 THE COURT: And Mr. Petersen?

1 agreement in place.

2 THE COURT: Okay. That takes care of the
3 "ride on the bus" set of claims.

4 The other ones seem to be such things as,
5 which I found a little unusual, calisthenics -- I have
6 read about that as a Japanese work process and it seems
7 to work very well over there and somebody in Tennessee
8 was experimenting with it when they brought in one of the
9 Toyota plants -- but also safety meetings and maybe some
10 other things. What is it about those that would justify
11 bringing all these together?

12 MR. WERNER: And additionally there are
13 activities that took place on the bus, for instance,
14 sometimes safety meetings. But I think the court has it
15 right. Generally they all fall into the category of work
16 activities that took place before what was the sort of
17 designated 7:00 time. Everyone started at 7:00. That's
18 when everyone started to get paid. The question is when
19 did they really start working.

20 You know, your Honor certainly has the
21 discretion on how to conduct the discovery, certainly how
22 to conduct the trial. I had thought that it would be
23 economical for the litigants and for the court to try to
24 do as much as we could together and then if when it came
25 to trial there was a necessity to split it up or have

1 several trials, to do it that way. One of the defendants
2 and then two and then three and four and five have now
3 started filing successive motions saying they want to
4 have it separately.

5 I'm going to do what the court says to do and
6 sort of with this tolling agreement. I can certainly
7 accommodate them. If they want to have 12 different
8 chopped up lawsuits and if the court thinks that's more
9 efficient for the court, there is no reason we can't do
10 it that way. I just thought it was more convenient to
11 have a single cause number with all the parties together.
12 If one defendant thinks, you know, this particular
13 witness or this particular document is not germane to me,
14 then...

15 THE COURT: Well, I guess some of the issues
16 are -- I mean, it's one thing if, for example, the
17 evidence is that everybody shows up before their assigned
18 work time and they all go to -- or are required to go to
19 the Motiva safety briefing; and, so, every worker of
20 every one of these defendants shows up and must spend,
21 before they start getting paid, 30 minutes going to a
22 safety briefing and 30 minutes of calisthenics. It's
23 difficult to imagine American workers allowing that. But
24 I haven't been around a refinery for years myself; so,
25 maybe that's the current way of doing it. That would be

1 one thing because then they would all be there together.

2 If it's Defendant 1 has its people show up at
3 whatever time and another defendant's is at lunchtime and
4 then another defendant is having them do something else,
5 then it doesn't make as much sense to try to have the
6 jury pick through all of those on one at a time. That's
7 what I'm trying to get at.

8 But I'm hearing from you that no, it is not
9 your information that when they showed up from the bus
10 because of, as in the bus ride, some Motiva regulation
11 says they must all come over for 15 minutes of safety
12 briefing and then another 15 minutes of calisthenics and
13 then another 15 minutes of dressing in proper clothes and
14 then finally they get paid. I mean, it's not a Motiva
15 thing; it's going to depend on each of the contractors'
16 or subcontractors' or companies' individual policies?

17 MR. WERNER: As I understand it, there were
18 occasional what I'll call just "Motiva" or really
19 "general contractors" -- the general contractor as a
20 joint venture between Bechtel and Jacobs. And while
21 there were occasionally some times that a meeting was
22 held what I'll call "across contractors," as I understand
23 it, it was not frequent.

24 And again, your Honor, I'm not -- if the court
25 is inclined to grant the motions to sever, I don't want

1 to --

2 THE COURT: Okay.

3 MR. WERNER: -- fight you on it. That's fine.

4 THE COURT: Well, it's not a fight. It's just
5 I need to figure out what the best way to do it is and
6 how different or disparate the various cases will be.

7 All right. Let me ask on the defense side
8 because this is akin to the same issue we're running into
9 in this district in many of the patent cases we're
10 having. I don't know how many of you follow that, but
11 this comes up a lot especially with the new America
12 Invents Act. And the trend has been to keep the cases
13 together through preliminary discovery and motions
14 because the issues are the same and then sever them out
15 for trial or try them separately, because there seems to
16 be some economies of scale especially at the early part
17 of the case, and then start moving them apart especially
18 for trial itself.

19 So, let me start off with Performance
20 Contractors, Inc., since your motion to sever is on top
21 of the ones I've got here. Tell me why that might not be
22 feasible. It's something we're having an experience with
23 in, like I say, other complex cases.

24 MR. FOSTER: Well, judge, if we're not talking
25 about bussing, if we put the bussing issue aside, I think

1 you're going to find that the fact scenarios alleged
2 versus what happened is going to vary contractor to
3 contractor. Everybody is going to have different foremen
4 and supervisors who are going to be directing different
5 employees who are going to have spent a different degree
6 of tenure at this particular plant.

7 A number of the plaintiffs -- and presumably
8 for the others but certainly for us -- never set foot on
9 Motiva property, a number of those plaintiffs. There's
10 just a lot of differences. There may be a way if the
11 bussing issue were included; but as I appreciate it, the
12 bussing issue is going to be in this case as well pretty
13 much be remitted pending the Fifth Circuit's decision.

14 So, maybe one way to do it is to start -- is
15 to grant the severance and start dealing with each
16 particular case as they may be. I think severance is
17 proper. I think it's incredibly unwieldy. There is
18 so --

19 THE COURT: Well, I mean, counsel doesn't seem
20 to disagree with you on severance is proper. What I'm
21 now looking at is the most efficient way of dealing with
22 pretrial and then trial, and that's -- it's just in the
23 last few months all the patent judges of this district --
24 and we handle a fair number of the patent cases in the
25 country here -- are dealing with this same kind of an

1 MS. HEADLEY: You know, your Honor, I'm --

2 THE COURT: You can't have your cake and eat
3 it, too, is what I'm saying.

4 MS. HEADLEY: I understand. I just think the
5 plaintiff has a higher burden than he's meeting.

6 THE COURT: Higher burden than what?

7 MS. HEADLEY: To establish the need for this
8 when he's got separate claims and separate claimants.

9 THE COURT: Well, we're not talking about
10 total severance at this point. We're talking about
11 early-on discovery, and I've already told you that it
12 appears -- and Mr. Werner seems to agree -- severance is
13 appropriate. And I can't see many cases where I would be
14 requiring two defendants to try the case together. But
15 how do we deal with this question of -- and I don't know
16 exactly how the jobsite works; but if there is
17 depositions being taken of people on the jobsite at the
18 same time your people are there -- it's kind of like an
19 employment case. Who knows who's -- you know, when Sue
20 is complaining that Bob sexually harassed her and, you
21 know, Sarah was upstairs looking down watching this
22 horrible situation, well, Sarah is a witness. Now, Sarah
23 may have actually been a vendor, not part of the
24 employees. Her deposition can be taken.

25 I mean, I can't imagine that you're going to